

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0492; FRL-8930-5]

Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from confined animal facilities (CAFs) such as dairies, cattle feedlots, poultry and swine farms. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 13, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0492, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in

the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947-4115, *Steckel.Andrew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. EPA’s Evaluation and Action
 - A. How is EPA evaluating the rule?
 - B. Does the rule meet the evaluation criteria?
 - C. What are the rule deficiencies?
 - D. EPA Recommendations to Further Improve the Rule
 - E. Proposed Action and Public Comment
- III. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Agency	Rule	Rule title	Adopted	Submitted
SJVAPCD	4570	Confined Animal Facilities	06/18/09	06/26/09

This rule submittal meets the completeness criteria in 40 CFR Part 51 Appendix V.

B. Are there other versions of this rule?

There are no previous versions of Rule 4570 in the SIP. The rule was submitted to EPA on October 5, 2006, but we have not acted on this submittal. Subsequent decisions in California state court ⁽¹⁾ concerning the rule resulted in readoption and resubmittal of the rule as shown above.

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section

110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 4570 is designed to decrease VOC emissions from dairies, beef feedlots, poultry and swine houses, and other CAFs. The rule’s requirements apply to large facilities defined in Table 1 of the rule; for example, dairies with more than 1000 milk cows, beef feedlots with more than 3000 cattle, and poultry facilities with more than 650,000 chickens. These CAFs must obtain a permit from the SJVAPCD codifying the VOC mitigation measures the owner/operator chooses to implement from the relevant menus in Tables 2–6 of the rule. Sections 6–8 of the rule describe additional facility requirements concerning permitting, recordkeeping, compliance testing and monitoring.

EPA’s technical support document (TSD) has more information about this rule.

II. EPA’s Evaluation and Action

A. How Is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81) and has CAFs large enough to be major sources of VOC emissions, so Rule 4570 must fulfill RACT.

¹ See *Association of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.*, 168 Cal. Ap. 4th 535 (Cal. App. 5 Dist. 2008).

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

Our TSD lists additional references used in our review.

B. Does the rule meet the evaluation criteria?

Rule 4570 improves the SIP by establishing requirements that reduce VOC emissions from CAFs. Since no other version of these requirements is in the SIP, the rule fulfills our criteria regarding SIP relaxations. In addition, Rule 4570 requirements are sufficiently clear, and contain adequate monitoring, recordkeeping and other provisions to determine compliance; so, the rule fulfills our criteria regarding enforceability.

We are postponing a decision on whether the SIP submittal demonstrates that Rule 4570 implements RACT for dairies, beef feedlots and other cattle facilities. The \$14.8 million National Air Emission Monitoring Study will be completed by May 2010 and VOC emission estimating methods for CAFs will be completed by November 2011. Because we expect this information is likely to help clarify RACT, we believe that a delay in evaluating SJVAPCD's RACT demonstration for various cattle operations is appropriate. However, we also believe that we have sufficient information to conclude that SJVAPCD has not demonstrated that Rule 4570 fulfills RACT for poultry and swine operations. The specific deficiencies are identified below. Our TSD provides additional information on our conclusions regarding RACT for both dairies and feedlots, and poultry and swine.

C. What are the rule's deficiencies?

These elements of the rule submittal conflict with section 182 of the Act and prevent full approval of the SIP revision.

1. Rule 4570 exempts poultry operations between 400,000 and 650,000 chickens (see section 4.1 of the rule); these operations should be subject to the rule as major sources of VOC emissions.

2. The rule submittal did not provide adequate analysis to demonstrate that the rule's control measure menus implement RACT for poultry and swine facilities. Such analysis should review the availability and effectiveness of controls, and may necessitate rule revisions to ensure that the rule does not allow implementation of relatively ineffective control measures when more effective measures are reasonably available to a class of operations. *Please see our TSD for a few examples of the type of concerns that should be addressed by this analysis.*

D. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the SJVAPCD modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of Rule 4570 to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of Rule 4570 under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVAPCD, and EPA's final limited disapproval would not prevent the district from enforcing the rule.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a) (2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing

requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875 (*Enhancing the Intergovernmental Partnership*). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications (is defined in the Executive Order to include regulations that have (substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to

ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a state rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 30, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–16644 Filed 7–13–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0024; FRL–8930–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the San Joaquin Valley ozone nonattainment area. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *August 13, 2009*.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0024, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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